IN THE

Supreme Court of the United States

OCTOBER TERM 1972

No. 72-1146

T. M. MILAN, ET AL.,

Petitioners

VERSUS

READING & BATES OFFSHORE DRILLING COMPANY, ET AL

BRIEF FILED IN OPPOSITION

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REPLY BRIEF

QUESTIONS PRESENTED

The questions presented are whether:

1. The rights of the claimants against Reading & Bates and its insurer and against Amoco Production Company are exclusively governed, respectively, by the Jones Act and the Death on the High Seas Act with their prescriptive periods and requirements concerning parties-plaintiff;

2. The claim is barred by laches; and

3. An independent cause of action under Moragne, if it exists, must be asserted by the representative of decedent.

STATEMENT OF THE CASE

In June, 1964, Arnold Milam, a seaman employed by Reading & Bates Offshore Drilling Company, was killed aboard its Barge C. P. BAKER in the Gulf of Mexico, about seventy-five miles from shore. Decedent's widow was appointed administratrix of his estate in August, 1964, and settlement was effected with her, in her individual and representative capacities, in September, 1965. Her claim, in a pending proceeding by Reading & Bates, for exoneration from or limitation of liability, was dismissed with prejudice. The limitation proceeding was dismissed in 1970. In January, 1972, nearly eight years after Milam's death, more than six years after settlement with his widow, and two years after dismissal of the Reading & Bates limitation petition, the parents of Milam sued Reading & Bates, its insurer and Amoco Production Company. The District Court held that the claims, if any, of decedent's parents had to be asserted by the administratrix of his estate and granted summary judgment. The Court of Appeals for the Fifth Circuit affirmed.

ARGUMENT

MAY IT PLEASE THE COURT:

There are no conflicting appellate decisions, either federal or state, on the issues here presented. The case is an isolated tort matter, prescribed on its face, on the issue of which all lower court rulings in this matter, and similar cases, have been consistent

and in accord with the prior directions of this Court. It is respectfully submitted that there are neither special nor important reasons for granting review of this case on writ of certiorari.

ISSUES NOT REACHED

Not reached by the lower courts are the respondents' contentions that petitioners' claims are governed solely by the Jones Act and the Death on the High Seas Act.

Decedent was a seaman in the employ of Reading & Bates Offshore Drilling Company. As against his employer and its insurer, the Jones Act is the exclusive remedy.[1] A wrongful death action under the Jones Act must be asserted by the personal representative,[2] the administrator of decedent's estate.[3] The suit is not maintainable unless commenced within three years of death.[4] Since the suit against Reading & Bates and its insurer was not instituted by the proper party within the required time, it is not maintainable in any event.

1/ Gillespie v. U.S.Steel Corp., 379 U.S. 148 (1964).

2/ 46 U.S.C. 688.

3/ Civil v. Waterman SS Corp., 217 F. (2d) 94.

4/ 45 U.S.C. 56.

Decedent was killed on a vessel seventy-five miles from shore. His heirs had clear right to sue a non-employer, such as Amoco Production Company, under the Death on the High Seas Act.[5] Since Milam was not employed on an artificial island, the Outer Continental Shelf Lands Act,[6] making statutes of contiguous states applicable,[7] is not in issue.

Under the Death on the High Seas Act, suit must be brought by the personal representative of decedent within two years.[8] Since the suit against Amoco Production Company was not timely brought nor asserted by the proper party, it too would be dismissed in any event.

A final defense not reached below is based on laches. This suit is asserted more than seven years after death of the decedent, well past any comparable time limitation period of either federal or state statutes, and approximately two years after dismissal of Reading & Bates' limitation proceeding, which was brought to secure a marshalling of claims and concursus of claimants. The manifest prejudice, caused by petitioners' inexcusable delay in instituting suit, would have resulted, in itself, in dismissal of the cause.

5/ 46 U.S.C. 761, et seq.

6/ 43 U.S.C. 1331.

7/ Rodrigue v. Aetna, 395 U.S. 352.

8/ 46 U.S.C. 763.

LOWER COURT DECISIONS WERE CORRECT

Finally, even assuming an independent cause under Moragne v. States Marine Lines when statutory remedies are available to petitioners, the decisions of the lower Courts are correct. Petitioners may not maintain this action in their own names under the Death on the High Seas Act, to which Moragne directs attention for guidance, nor may they do so under the Jones Act. Under the law of the contiguous state, Louisiana, they have no standing to sue because decedent left a surviving spouse.[9]

Moragne refers to a "...strong concern for uniformity..." in the application of the maritime law. To permit petitioners to maintain this action, where no right to do so exists under federal or state statutes, would do disservice to that uniformity.

Respectfully submitted,

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[9] Art. 2315, Louisiana Civil Code.

C E R T I F I C A T E

I certify that copy of the foregoing reply brief has been mailed, postage prepaid, to opposing counsel this _____ day of March, 1973.

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CERTIORARI DENIED